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IN THE

Supreme Court of the United States

October Term, 1961
No. 308

THOMAS EISTRAT,

Petitioner,

vs.

NORTHERN LUMBER COMPANY, a partnership composed of Charles V. Clawson and Don Clawson: CHARLES V. CLAWSON, DON CLAWSON,

Defendants and Respondents.

Petitioner's Reply Brief in Regard Petition for a Writ of Certiorari to the District Court of Appeal of the State of California

THOMAS EISTRAT
1020 S. Almansor Street
Alhambra, California
In Propria Persona.

LAW BLANK REGISTER

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No party should prevail in a petition for certiorari before the United States Supreme Court by substantially misrepresenting the reasons for granting or denying the writ, the case, and the certified record. It is submitted the petition herein is scrupulously correct and proper, while respondents' reply brief is flagrantly not so!

I

RESPONDENTS' REASONS FOR DENYING THE WRIT ARE MISSTATEMENTS

Under "Reasons for Denying the Writ", each of respondents' three points would be good, were they not all based upon substantial misstatement of the facts in the certified record.

(a) Misstatement of No Jurisdiction

Respondents' brief states (p. 5):

> "THIS HONORABLE COURT IS WITHOUT JURISDICTION. The pleadings in the State Court make no reference to any Federal question" — "The Findings of Fact and Conclusions of Law" — "and Judgment" — "make no reference to, nor decide, any Federal question."

Respondents' brief ignores the many references to the presentation of the federal question cited on pages 6 and 7 of the petition herein.

In addition, respondents' above argument is a misstatement of the whole certified record relating to their argument. The certified record herein shows as follows omitted matter which substantially affect respondents' argument of no pleadings:

> "THE COURT: Well it is true that the order in this particular action numbered 6688 in bankruptcy is pleaded by way of a defense, and therefore I assume that it being known to the defendant the plaintiff was relieved of pleading it" (Rptr. Tr. 74:24 to 75:2) — "and then the defendant having pleaded the judgment in the

federal case, I take it it relieves the plaintiff of the necessity of pleading it." (Rptr. Tr. 76:2-5)

The certified record also refutes respondents' statement of "no reference to any Federal question" in the "Findings of Fact". The certified record shows Paragraph XV of the Findings of Fact of the state trial court herein referring to petitioner's petition to reclaim in the federal court, a part of the federal question (Clk. Tr. pp. 46-47). The certified record also shows Paragraph XVI of the Findings of Fact of the state trial court referring to the Findings of Fact and Judgment of the federal court, a part of the federal question (Clk. Tr. pp. 47-49).

The certified record also refutes the statement in respondents' brief of no reference to, nor decision of any federal question in the state trial court's Conclusions of Law. Paragraph IV of the state trial court's Conclusions of Law specifically refers to the federal judgment and shows the state court making a conclusion of law in regard to the federal judgment (Clk. Tr. p 50).

The state courts decisions as to the effect of the federal judgment are part of the important federal questions herein. The state courts have held that the federal judgment did not grant the petition to reclaim the property; while the federal courts have held that the petition was granted and that the bankrupt at no time had any right, title or interest in the property. In addition, the state courts have held that in any event respondents are not bound by the bankruptcy court adjudication of title to the property claimed by bankrupt, even though respondents took the property after com-

mencement of the bankruptcy proceeding and their only claims are through the bankrupt.

In the petition herein, as well as in all the state courts herein, petitioner has urged that nullification and repudiation of the final judgment as to title by the bankruptcy court was in contravention to the 14th Amendment of the United States Constitution — a most important federal question.

The certified record therefore does not support the argument on pages 5 and 6 of respondents' brief of no reference to nor decision of any federal question, and therefore no jurisdiction in the United States Supreme Court.

(b) Misstatement of No Federal Question

Respondents' brief states (p. 7):

> "IT WAS UNNECESSARY TO DECIDE ANY FEDERAL QUESTION TO RENDER A JUDGMENT FOR RESPONDENTS HEREIN".

Respondents took the lumber from petitioner's land after the June 24, 1949 commencement of the Jones bankruptcy proceeding (Clk. Tr. 45:17 to 46:8; 104:4-12); with notice respondents would be held liable in conversion before they took the lumber (Exh. 1; App. Reply Br. pp. 2, 3); and with never any permission from petitioner to take the lumber (Exh. 2); and respondents have refused to pay petitioner or return the lumber (Clk. Tr. 44:31-32; 45:6-9).

Respondents only defense was a deal solely between the bankrupt and respondents (App. Reply Br. pp.

2, 3). Respondents assert the bankrupt had title and not petitioner; however, the bankruptcy court held petitioner and not the bankrupt had title. The state courts herein have refused to give effect to the bankruptcy court's final order adjudicating the title in favor of petitioner.

The title to all the logs, lumber and timber on petitioner's land at the commencement of the bankruptcy proceeding on June 24, 1949 was tried in petitioner's petition to reclaim filed September 29, 1949. Such property included that taken by respondents herein.

The state trial court received in evidence petitioner's petition to reclaim said property filed in the bankruptcy court, together with the findings, conclusions of law, and final judgment of the federal court. A reduced size true copy of the petition and federal judgment exhibits in evidence is appended hereto.

The federal judgment was asserted by petitioner in all the state courts to be conclusive evidence that the bankrupt (and therefore respondents who only claimed under the bankrupt) had no right, title, or interest in this lumber. This lumber was part of that described in the petition to reclaim as being in logs or lumber on petitioner's land at the commencement of the bankruptcy proceeding.

Remington on Bankruptcy, Vol. 6. 1952 Ed., p. 115, cites the federal cases holding the doctrine of caveat emptor applies to anyone taking from anyone acting for a bankrupt's estate. Page 8 of the petition herein sets forth the authority of this United States Supreme Court for the rule that upon the filing of a petition

in bankruptcy the bankruptcy court acquires exclusive jurisdiction over the bankrupt and his estate; and that the failure of a state court to give full faith and credit to a bankruptcy court judgment raises a federal question and confers jurisdiction upon the United States Supreme Court.

Arguments by respondents about the lumber belonging to the bankrupt because he assertedly cut and paid for some of the timber before October 10, 1948, even if true (and they are not), are wholly immaterial to this action herein because the final judgment of the bankruptcy court cannot lawfully be subject to collateral attack.

The assertion in respondents' brief herein notwithstanding, it was necessary for the state courts to decide a federal question. The federal question was the holding and conclusiveness herein of the bankruptcy court's final judgment on petitioner's petition to reclaim the property.

(c) Misstatement as to State Court Giving Effect to Federal Court Judgment

Respondents' brief states (pp. 8-9):

> "THE STATE COURT NEITHER REPUDIATED NOR NULLIFIED A FEDERAL COURT JUDGMENT, BUT IN FACT GAVE EFFECT TO SAME."

Respondents above statement is incorrect.

The state trial court by its Conclusions of Law in paragraph IV (Clk. Tr. p. 50) concluded that the "Order of the United States District Court" — "on

or about September 27, 1951, had reference to the prayer of the petition and was a determination only that all moneys and property and things of value then in possession of the Receiver and Trustee in Bankruptcy proceeding, be delivered over to the petitioners therein, Thomas Eistrat, the plaintiff herein"—"LET JUDGMENT BE ENTERED ACCORDINGLY". That conclusion of law and judgment accordingly was prepared on respondents' stationary and is completely erroneous.

The erroneous position of the state trial court is reflected from paragraph VI of the federal judgment, where the federal court decrees the mill and machinery be retained by the bankrupt estate. Another error appears in the disregard of paragraph I of the federal judgment decreeing that the trustee and the bankrupt has no right to any of the lumber removed from petitioner's property. Another error appears in the disregard of paragraph V of the federal judgment decreeing that any claim against any person or persons for the value of logs or lumber removed from petitioner's property are the property of petitioner.

The state appellate court's opinion (appended to petition herein) followed respondents' reply brief therein. The state appellate court adopted the new erroneous position of respondents by stating in regard to the federal court judgment that plaintiff was only the owner of the lumber in possession of the receiver on September 29, 1949, and that plaintiff only petitioned for that property held by the receiver as of September 29, 1949 (190 A.C.A. 326, 332).

The erroneous position of the state appellate court

is further reflected in its opinion stating that even if the federal court found the bankrupt had no rights in the property, respondents herein would not be bound by the bankruptcy proceedings and were for all intents and purposes strangers to the federal court proceedings. (190 A.C.A. 326, 332).

The erroneous position of the state appellate court is reflected from the face of the petition to reclaim property (Exh. 5 in evidence and also reduced size appended hereto). Petitioner herein, and therein, petitioned the bankruptcy court for the return of all the logs, lumber and timber in the possession of the debtor Jones at the time of his filing his bankruptcy proceeding on June 24, 1949. Petitioner also alleged (lines 24 to 32, page 1, thereof) that the said property the debtor had was now (September 29, 1949) in possession of the receiver and that petitioner is entitled to immediate possession thereof.

Respondents reply brief before this United States Supreme Court also on page 9 misstates by omission said petition to reclaim property. Respondents omit that portion of the petition to reclaim property wherein petitioner petitioned for the return of all the logs, lumber and timber on his land on June 24, 1949 at the time the bankruptcy proceeding was filed.

As stated on pages 4 and 5 of the petition herein before the United States Supreme Court, the same federal judge, Honorable C. E. Beaumont, reaffirmed the October 1, 1951 judgment on the petition to reclaim — by again so decreeing in the judgment entered February 3, 1954 against the Massachusetts Bonding Company for cost of removal of a sawdust pile.

The February 3, 1954 Federal judgment states:

> "The claimants having prevailed in their petition to reclaim property as by decree and order of the court entered on October 1, 1951 decreeing that the bankrupt had no right, title or interest in or to the property described in said petition to reclaim property." (Clk. Tr. 56:20 to 57:3)

The property claimed by the bankrupt was the logs, timber and lumber on petitioner's land at the time of commencement of the bankruptcy proceedings on June 24, 1949. Petitioner petitioned to reclaim that property. The final judgment of the bankruptcy court granted petitioner exactly what he petitioned for.

There is no merit is respondents' assertions herein (pp. 8-9, their brief) that "the state court neither repudiated nor nullified a federal court judgment, but in fact gave effect to same". The state courts herein permitted collateral attack and repudiation of that federal judgment; decreed it was not binding on respondents; and then held for respondents in derogation of the federal judgment. Pages 6 and 7 of the petition herein reference presentation of the federal question in the state courts below.

CONCLUSION

Respondents took the lumber after commencement of the bankruptcy proceedings without any permission from petitioner.

Had the federal court adjudicated the title to the lumber in favor of the bankrupt, instead of petitioner,

the trial involving respondents in the state court would never have occurred. Had there been a trial under such circumstances, it would have been very brief — defendants could have offered a federal court judgment in favor of the bankrupt therein (had there been such a judgment), and obtained judgment without further ado.

Petitioner submits that at every stage of the case in the courts below petitioner urged that respondents were conclusively bound by the federal judgment; and that denial by the state courts to give effect thereto in this case was a substantial violation of petitioner's rights in contravention of the 14th Amendment of the United States Constitution.

Respectfully submitted,

THOMAS EISTRAT
Petitioner

October 8, 1961.

FILED

IN THE DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION,

In the Matter of the Estate of TOM G. JONES, also known as TOM JONES, doing business as JONES LUMBER & MILL COMPANY, Debtor.

No. 6686 In Proceeding for Arrangement

PETITION TO RECLAIM PROPERTY

TO WILLIAM A. McGUOIN, ESQ., Referee in Bankruptcy:

The petition of Thomas Eistrat and Elma Eistrat, respectfully represents:

1. On June 24, 1949, the above debtor filed a petition in this court proposing an arrangement with his unsecured creditors under the provision of Chapter 11 of the Act of Congress relating to bankruptcy.

2. On September 9, 1949, Vincent DiGiorgio was appointed Receiver of the property of said debtor, was qualified and is now acting as said Receiver.

3. At the time of the filing of said petition by said debtor herein, said debtor had in his possession, and the Receiver now has in his possession, the following property belonging to your petitioners:

> The Northwest Quarter (NW¼) of Section Twenty-nine (29), Township Twenty-Four (24) South, Range thirty-two (32) East, Mount Diablo Base and Meridian, together with the timber and lumber and logs located thereon.

4. Your petitioners are entitled to the immediate possession of said property.

5. Your petitioners have made demand upon said Receiver for the surrender of possession of said property and said Receiver has failed and refused to comply with such demand.

WHEREFORE your petitioners pray that Vincent DiGiorgio, said Receiver, be directed to surrender possession to your petitioners of said property, and that your petitioners have such other and further relief as is just.

THOMAS EISTHAT)
) Petitioners
EMMA EISTHAT)

By _____
Eckhart A. Thompson, Attorney for Petitioners

Robert E. Moock, Attorney for Petitioners

Eckhart A. Thompson, Atty for Petitioners

State of CALIFORNIA)
County of Fresno) ss.

HOWART A. THOMPSON, being sworn, says: That he is an attorney at law duly admitted to practice before all courts of the State of California and has his office at 810 Security Bank Building, Fresno, California, and is the attorney for petitioners in the above entitled action; that the facts of the above entitled action are within affiant's knowledge, and for that reason affiant makes this verification for petitioners herein; that he has read the foregoing petition, and knows the contents thereof; that the same is true of affiant's own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters affiant believes it to be true.

Sworn to before me this ____ day of _____, 1947.

_____
Notary Public in and for said County and State.

KISTRAT vs. NORTHERN LUMBER CO., et al

STATE OF CALIFORNIA, County of Los Angeles } ss. No. 63064

I, HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original

Plaintiff's Exhibit 5 (Petiton to Reclaim Property) filed June 12, 1956.

on file and of record in my office, and that I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court this 18th day of September 19 61

HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles

By S. Donnelly, Deputy.

12

FILED

SEP 27 1951

EDMUND L. SMITH, Clerk

By _____ Deputy Clerk

FILED

OCT 1 1951

JUDGMENT DOCKETED AND ENTERED

OCT 1 1951

EDMUND L. SMITH, Clerk

By _____ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

In the Matter of

TOM G. JONES, also known as TOM JONES, doing business as JONES LUMBER & MILL COMPANY,

Bankrupt.

No. 6689 In Bankruptcy

ORDER ON PETITION for Review of Order of Referee dated October 21, 1951.

THOMAS EISTRAT And ELMA EISTRAT having filed a petition for review of order of Referee herein, dated October 21, 1950, and having thereafter filed a motion for an order requiring the bankrupt herein and JONES LUMBER & MILL COMPANY, a co-partnership composed of TOM JONES, DANNY R. JONES and CLOVIS JONES, to be bound by such order or orders as the Court might make in respect to said petition for review, said THOMAS EISTRAT and ELMA EISTRAT appearing in their own persons, the Trustee and Receiver herein, VINCENT P. DI GIORGIO, appearing by KENNETH H. BATES, of Deadrich, Gill & Bates, the bankrupt and said partnership JONES LUMBER & MILL COMPANY appearing by ROLAND S. WOOLRUFF, and the Court having considered the proceedings had before the Referee and having received further evidence, and having made its written Findings of Fact and Conclusions of Law, and ordered that an order be entered herein in accordance therewith, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I

That VINCENT DI GIORGIO, Receiver and Trustee herein, the bankrupt herein, TOM G. JONES, also known as TOM JONES, doing business as JONES LUMBER & MILL COMPANY, a co-partnership composed of TOM JONES, DANNY R. JONES and CLOVIS JONES, and each of them, has no right, title, interest, claim, lien or right to possession in, to or against the following described real property, to-wit:

The North West Quarter, Section 29, Township 24 South, Range 32 East, Mt. Diablo Base Meridian, also sometimes known as the Eistrat property

or any part thereof, or logs, lumber or timber thereon or any part thereof or in or to any of the logs, timber or lumber removed from said real property.

II.

That the said THOMAS EISTRAT and ELMA EISTRAT are the owners of said real property and all of the logs, timber and lumber thereon and entitled to immediate possession thereof.

III.

That the Trustee herein forthwith deliver over to said THOMAS EISTRAT and ELMA EISTRAT possession of said real property and the logs, lumber and timber thereon.

IV.

That the Trustee herein, VINCENT P. DI GIORGIO, deliver to said THOMAS EISTRAT and ELMA EISTRAT the sum of $1,381.64.

V

That neither the Trustee herein, nor the Receiver herein, nor said partnership, nor said bankrupt, has any present right, title or interest in or to any claim against BRUSH INDUSTRIAL LUMBER CO., SUNSET CABINET SHOP, or any

present claim against any other person or per[illegible]ons for the value of logs or lumber removed from said [illegible]roperty, and such claim or claims as may exist, if any [illegible]are the property of said THOMAS RISTRAT and EMMA RISTRAT.

V

THAT VINCENT F. DI GIORGIO as Trustee [illegible] of the Estate of TOM O. JONES, also known as TOM JONES, doing business as JONES LUMBER & MILL COMPANY, Bankrupt, is the owner and entitledto the possession of the mill and machinery of the said bankrupt located upon the real property escribed as:

The North West Quarter, Section 29, [illegible]ownship 24 South, Range 30 East, Mt. Diablo [illegible]ase Meridian, County of Tulare, State of [illegible]California, also sometimes known as the Ristrat [illegible]roperty.

VII

Any and all restraining orders, inc[illegible]din; among others, an order made by William A. McGuin, [illegible]eferee herein, on or about June 24, 1949, an order made here[illegible]n by Honorable Leon R. Yankwich on or about July 15, 1949, an[illegible]der made herein by Honorable Campbell E. Beaumont, Judge [illegible]rein, on or about April 25, 1951, in so far as said orde[illegible] or any of them restrain THOMAS RISTRAT, EMMA RISTRAT, [illegible] either of them, are hereby dismissed and discharged, a[illegible]ject to the right of the bankrupt herein to invoke the [illegible]unctive power of this Court to restrain any act on i[illegible]personam against the bankrupt abiding the resulting or [illegible]enial of a discharge of the bankrupt.

DONE IN OPEN COURT THIS 27th DAY OF [illegible]tember, 1951.

(Costs taxed by Court on Oct 10, 1951 at $ 67.

C. E. Beaumont

Judge of the Distri[illegible] Court of the United State[illegible]

EISTRAT vs. NORTHERN LUMBER CO., et al

STATE OF CALIFORNIA, County of Los Angeles } ss. No. 630646

I, HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original Plaintiff's Exhibit 7A (Order on Petition for Review of Order of Referee dated October 21, 1951) filed June 15, 1956,

on file and of record in my office, and that I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court this 18th day of September 19 61

HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles

By S. Kahagan, Deputy.